

## **Title 2. Secretary of State Notice of Proposed Regulatory Action**

NOTICE IS HEREBY GIVEN that the Secretary of State is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments in writing relevant to the action proposed. Written comments, including those sent by mail, facsimile, or e-mail to the address listed under Contact Person in this Notice, must be received by the Secretary of State at its office not later than 5:00 p.m. on December 20, 2013.

A public hearing is scheduled for 2:00 p.m. on December 13, 2013, at 1500 11<sup>th</sup> Street - Auditorium, Sacramento, California, 95814. Following the public hearing and the written comment period, the Secretary of State, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

### **AUTHORITY AND REFERENCE**

Section 19205 of the California Elections Code authorizes the Secretary of State to establish the specifications for and regulations governing voting machines, voting devices, vote tabulating devices, and any software used for each, including the programs and procedures for vote tabulating and testing. The proposed regulations would implement, interpret and make specific Section 19205 of the California Elections Code.

### **INFORMATIVE DIGEST**

#### **A. Informative Digest**

Senate Bill 360, Chapter 602, Statutes 2013, amended California Elections Code Division 19 regarding the certification of voting systems.

Prior to Senate Bill 360, all direct recording electronic voting systems had to receive federal qualification before the Secretary of State could approve such system. Senate Bill 360 removes the requirement to receive federal qualification and places the certification decision at the sole discretion of the Secretary of State. Further, Senate Bill 360 reiterates that the Secretary of State adopt and publish voting system standards and regulations and study the performance of

the voting systems in use in the state. Until the voting system standards and regulations have been adopted, Senate Bill 360 states that the Voluntary Voting System Guidelines Draft Version 1.1, as submitted to the United States Election Assistance Commission on August 31, 2012, shall be used as state standards to the extent that they do not conflict with California Elections Code.

Accordingly, the Secretary of State proposes to add Chapter 6.1, sections 20700 through 20707 of Division 7 of Title 2 of the California Code of Regulations. These sections set forth the procedures for submitting a voting system for certification and the standards for which the voting system being submitted must meet prior to receiving Secretary of State certification.

#### B. Policy Statement Overview/Anticipated Benefits of Proposal

The proposed addition of Chapter 6.1, sections 20700 through 20707 of Division 7 of Title 2 of the California Code of Regulations is meant to:

1. Establish the specifications for voting machines, voting devices, vote tabulating devices, and any software used for each, including the programs and procedures for vote tabulating and testing. The proposed regulations would implement, interpret and make specific Section 19205 of the California Elections Code.
2. Clarify requirements imposed by recently chaptered Senate Bill 360, Chapter 602, Statutes 2013, which amended California Elections Code Division 19 regarding the certification of voting systems.
3. Clarify the newly defined voting system certification process, as prescribed in Senate Bill 360.

#### C. Consistency and Compatibility with Existing State Regulations

The Secretary of State is the only office authorized by statute to certify voting systems for use in California. Accordingly, a review for any comparable regulations, established that these are the only regulations dealing with voting system review, testing and certification. Therefore, the proposed regulations are not inconsistent or incompatible with existing state regulations.

#### D. Documents Incorporated by Reference:

Voting System Performance Standards (October 2013)

#### E. Documents Relied Upon in Preparing the Regulations:

Economic Impact Analysis/Assessment.

**FISCAL IMPACT ESTIMATES AND RESULTS OF THE ECONOMIC IMPACT  
ANALYSIS/ASSESSMENT**

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: No

Cost to Any Local Agency or School District for Which Government Code Sections 17500 - 17630 Require Reimbursement: No

Business Impact: None

Impact on Jobs/New Businesses: The Secretary of State has determined that this regulatory proposal will not have any impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Benefits of the Regulation to the health and welfare of California residents, worker safety, and the state's environment: None

Cost Impact on Representative Private Person or Business: None. The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on Housing Costs: None

Effect on Small Business: None. These regulations establish the specifications for voting machines, voting devices, vote tabulating devices, and any software used for each, including the programs and procedures for vote tabulating and testing. These standards ensure the accuracy, security and reliability of voting systems. These standards are intended for use by the manufacturers of voting systems, county election officials, and the interested public.

Significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: No

Economic Impact Assessment/Analysis Summary Comments: This proposed regulation is not a "major regulation" therefore there are no economic impact assessment comments from the Department of Finance or a response. These regulations establish the specifications for voting machines, voting devices, vote tabulating devices, and any software used for each, including the programs and procedures for vote tabulating and testing. These standards are intended for use by the manufacturers of voting systems,

county election officials, and the interested public. By adding the Voting System Certification regulations, an applicant seeking voting system certification will have a more defined and clear path to receiving such certification of the applicant's voting system for use in California. But above all, these standards ensure the accuracy, security and reliability of voting systems.

### **CONSIDERATION OF ALTERNATIVES**

The Secretary of State must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposal described in this Notice.

Any interested person may present alternatives to the regulations or statements or arguments relevant to any of the above determinations.

### **AVAILABILITY AND LOCATION OF INITIAL STATEMENT OF REASONS, THE TEXT OF PROPOSAL, THE RULEMAKING FILE AND THE FINAL STATEMENT OF REASONS**

The Secretary of State has prepared an Initial Statement of Reasons setting forth the rationale for the proposed action and has available all the information upon which the proposal is based. The Initial Statement of Reasons is available on the Secretary of State website.

Copies of the express language of the proposed regulations, any document incorporated by reference, the Initial Statement of Reasons, and all of the information upon which the proposal is based, may be obtained throughout the rulemaking process upon request from the Secretary of State contact or on the website listed below.

A Final Statement of Reasons will be created after the closing of the public comment period. You may obtain a copy of the Final Statement of Reasons once it has been prepared, from the contact person named below or by accessing the website listed below.

## **CONTACT PERSON**

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

Ryan Macias  
Secretary of State  
1500 11<sup>th</sup> Street, OVSTA - 6th Floor  
Sacramento, CA 95814  
(916) 653-7244 (telephone)  
(916) 653-4620 (fax)

[Ryan.Macias@sos.ca.gov](mailto:Ryan.Macias@sos.ca.gov)

The backup contact person is:

Lowell Finley  
Secretary of State  
1500 11<sup>th</sup> St., 6<sup>th</sup> Floor  
Sacramento, CA 95814  
(916) 651-7837

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## **Website Access**

Materials regarding this proposal can be found at [www.sos.ca.gov](http://www.sos.ca.gov).